In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 166

RICHARD M. GLASSNER AND SYLVIA B. GLASSNER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

STATEMENT

Petitioner,[1] a practicing lawyer, was also president and managing officer of three corporations engaged in the finance business. In 1953 and 1955 one of these companies—Seth Boyden, Inc.—borrowed a total of $115,000 from Leon Gerhardt; these loans were guaranteed by petitioner and his wife. In 1953 petitioner personally borrowed $4,500 from Gerhardt; this loan was guaranteed by petitioner's wife. In 1954 the remaining two companies—Morley & Company and

[1] Sylvia B. Glassner, petitioner's wife, is a party solely because she filed joint returns with her husband.

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Treat & Company—borrowed a total of $54,000 from Samuel M. Goodman; like the loan to Seth Boyden, Inc., these loans were guaranteed by petitioner and his wife. (Pet. 3a).

In 1957 Seth Boyden, Inc., Morley & Company and Treat & Company went out of business without paying their debts to Gerhardt and Goodman. Petitioner and his wife were unable to make payment as guarantors of these debts. (Pet. 3a.)

On August 16, 1957, petitioner, in order to secure his outstanding indebtedness to Goodman, executed an agreement for the benefit of Goodman in which petitioner agreed to obtain life insurance, pay the premiums thereon, and designate Goodman as beneficiary thereof. Pursuant to this agreement, petitioner obtained a life insurance policy in the amount of $50,000, effective September 1, 1957. Goodman was designated as beneficiary and given exclusive control over the policy. A similar agreement was executed for the benefit of Gerhardt on November 14, 1957, and petitioner obtained life insurance policies in the total amount of $75,000, effective September 26, 1957, designating Gerhardt beneficiary and giving Gerhardt exclusive control over the policies. Petitioner entered into these life insurance agreements principally to protect his law practice. (Pet. 3a–4a.)

Pursuant to his agreement to pay the premiums on the life insurance policy of which Goodman was the beneficiary, petitioner made payments to Goodman totaling $2,776, $2,600 and $2,600 in the years 1958, 1959, and 1960, respectively. Goodman paid the cost of

the life insurance premiums and, to the extent the payments from petitioner did not fully cover their cost, he paid the balance out of his own funds. During the same years, petitioner made payments totalling $3,815, $5,100 and $5,200 into an account opened by Gerhardt for the purpose of receiving petitioner's deposits and applying them towards the premiums on the life insurance policies of which Gerhardt was beneficiary. To the extent that the deposits did not fully satisfy the cost of the premiums, Gerhardt, like Goodman, paid the balance out of his own funds. (Pet. 4a).

On his federal income tax returns for 1958, 1959, and 1960, petitioner claimed as deductions the amounts paid pursuant to the agreements with Goodman and Gerhardt. The Tax Court disallowed the deductions, finding them specifically prohibited by Section 264 (a)(1) of the Internal Revenue Code of 1954 (Pet. 1a–7a). The court of appeals affirmed (Pet. 8a–9a).

ARGUMENT

Section 264(a)(1) of the Internal Revenue Code of 1954 provides: "No deduction shall be allowed for—(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy." Contrary to petitioner's contention (Pet. 6–7), this section, where applicable, clearly precludes a deduction of life insurance premiums despite the fact that the amounts paid might otherwise be deductible under

separate sections of the Code. Section 261 of the Code—which, with Section 264, is part of Part IX of the Code, entitled "Items Not Deductible"—provides explicitly that "[i]n computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part." The applicable Regulations (Section 1.264–1, 1954 Code) also specify that, where Section 264 applies, "[p]remiums paid by a taxpayer on a life insurance policy are not deductible from the taxpayer's gross income, even though they would otherwise be deductible as trade or business expenses." See also *Klein* v. *Commissioner*, 84 F. 2d 310 (C.A. 7).

Since the policies in this case were taken out to secure debts owed by petitioner, they clearly constituted a benefit to him and the premium payments thus fell within Section 264 if paid by petitioner. *Jefferson* v. *Helvering*, 121 F. 2d 16 (C.A.D.C.); *Klein* v. *Commissioner, supra; Rieck* v. *Heiner*, 25 F. 2d 453 (C.A. 3), certiorari denied, 277 U.S. 608; *King* v. *Commissioner*, decided September 27, 1963 (P–H T.C. Memo, par. 63,267); *Barron* v. *Commissioner*, 14 B.T.A. 1022; *Parker* v. *Commissioner*, 13 B.T.A. 115. The Tax Court correctly decided that, although petitioner did not pay the premiums directly to the insurance companies, he was to be treated as having made the premium payments because, "[n]ot only did Glassner agree in writing to obtain insurance policies and pay the premiums thereon, but he testified that he was aware the sums he remitted were to be

used solely for the purpose of paying the premiums" (Pet. 6a–7a).[2]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1966.

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[2] *Snow* v. *Commissioner*, 31 T.C. 585, and *Pepper* v. *Commissioner* 36 T.C. 886, cited by petitioner, do not involve the deductibility of insurance premiums and are therefore not relevant here.

U. S. GOVERNMENT PRINTING OFFICE: 1966